

10.302.02

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Attorneys for Plaintiffs
TRI-VALLEY CARES, NUCLEAR
WATCH OF NEW MEXICO, MARYLIA KELLEY,
JANIS KATE TURNER, TARA DORABJI,
HENRY C. FINNEY and CATHERINE SULLIVAN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRI-VALLEY CARES, NUCLEAR)
WATCH OF NEW MEXICO,)
MARYLIA KELLEY, JANIS KATE)
TURNER, TARA DORABJI, HENRY)
C. FINNEY and CATHERINE)
SULLIVAN,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
ENERGY, NATIONAL NUCLEAR)
SECURITY ADMINISTRATION,)
LAWRENCE LIVERMORE)
NATIONAL LABORATORY, and LOS)
ALAMOS NATIONAL)
LABORATORY,)

Defendants.)

Civ. No. C-0-3-3926 SBA

**NOTICE OF PLAINTIFFS'
UNOPPOSED MOTION FOR
ENTRY OF JUDGMENT UNDER
F.R. Civ. P. 58(d); MEMORANDUM
IN SUPPORT OF MOTION;
DECLARATION OF COUNSEL;
~~PROPOSED~~ ORDER**

Judge: Hon. Sandra B. Armstrong
Hearing: None requested
Dept: 3

1
2 TO THE ABOVE-ENTITLED COURT AND TO THE PARTIES HEREIN:

3 PLEASE TAKE NOTICE that plaintiffs Tri-Valley CARES, et al., hereby move
4 this Court pursuant to Rule 58(e), Federal Rules of Civil Procedure, for an order directing
5 entry of Judgment in this matter.

6 Dated: December 12, 2006

STEPHAN C. VOLKER
JOSHUA A.H. HARRIS
MARNIE E. RIDDLE
LAW OFFICES OF STEPHAN C. VOLKER

8 ALLETTA BELIN, ESQ.
9 BELIN & SUGARMAN

10
11 By: 

Stephan C. Volker
Attorney for Plaintiffs
Tri-Valley CARES, et al.

12
13
14 **MEMORANDUM IN SUPPORT OF MOTION**

15 The grounds for this request are that (1) on October 16, 2006, the Ninth Circuit
16 Court of Appeal entered its Judgment directing that the prior judgment of this Court be
17 affirmed in part, reversed in part, and remanded, (2) on October 30, 2006 this Court
18 remanded this matter to defendants "for further proceedings consistent with the Ninth
19 Circuit's decision," and (3) the Clerk of this Court, by Memorandum filed November 30,
20 2006, denied plaintiffs' request for an award of its costs on the grounds that "[p]ursuant to
21 28 U.S.C. § 1924 there is no judgment or order for plaintiffs under which costs may be
22 claimed."

23 A true copy of the Deputy Clerk's November 30, 2006 decision refusing to award
24 costs to plaintiffs in this action is annexed as Exhibit 1. A true copy of this Court's Order
25 dated October 30, 2006 is annexed as Exhibit 2. A true copy of the Ninth Circuit Court of
26 Appeal's Judgment dated October 16, 2006 is annexed as Exhibit 3.

27
28 /////

1 /////

2 Rule 58(d) of the Federal Rules of Civil Procedure provides as follows:

3 A party may request that judgment be set forth on a separate document as
4 required by Rule 58(a)(1).

5 Rule 58(a)(2)(B) directs that:

6 The court must promptly approve the form of the judgment, which the clerk
7 must promptly enter, when: . . . (ii) the court grants other relief not described
8 in Rule 58(a)(2).

9 It appears that this Court's order dated October 30, 2006 remanding this matter to
10 the defendants for further proceedings consistent with the Court of Appeal's ruling
11 constitutes the "grant[ing of] other relief not described in Rule 58(a)(2)," and thus under
12 Rule 58(2)(B)(ii), triggers the Court's obligation to "promptly approve the form of the
13 judgment, which the clerk must promptly enter"

14 If the Court would prefer, plaintiffs will prepare a separate form of Judgment for
15 entry by the Court.

16 Respondents through their counsel Barclay T. Samford agreed not to oppose this
17 motion for entry of Judgment, as documented in the following Declaration of Counsel.

18 For the foregoing reasons, plaintiffs respectfully request that this Court enter
19 Judgment in this matter as soon as possible.

20 Dated: December 12, 2006

Respectfully submitted,

21 STEPHAN C. VOLKER
22 JOSHUA A.H. HARRIS
23 MARNIE E. RIDDLE
24 LAW OFFICES OF STEPHAN C. VOLKER

25 ALLETTA BELIN, ESQ.
26 BELIN & SUGARMAN

27 By: 

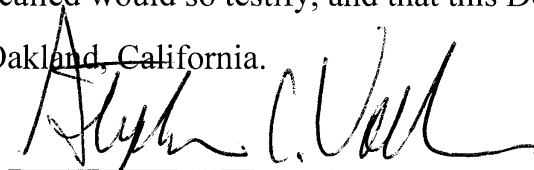
28 STEPHAN C. VOLKER
Attorney for Plaintiffs
Tri-Valley CAREs, et al.

DECLARATION OF COUNSEL

I, Stephan C. Volker, hereby declare:

1. I am counsel to plaintiffs and have personal knowledge of the following facts.
2. The facts recounted in the foregoing Memorandum are true and correct.
3. On December 1, 2006, I conferred by telephone with Barclay Samford, Justice Department attorney representing defendants in this matter. Mr. Samford agreed on behalf of defendants not to oppose plaintiffs' motion for entry of Judgment under Rule 58.

I declare under penalty of perjury that the foregoing facts are true of my personal knowledge, that I am competent to and if called would so testify, and that this Declaration was executed on December 12, 2006, in Oakland, California.


STEPHAN C. VOLKER

~~PROPOSED~~ ORDER

Pursuant to Rule 58(d) of the Federal Rules of Civil Procedure, the motion of plaintiffs Tri Valley CARES, et al., for entry of judgment in this matter is hereby GRANTED.

Plaintiffs shall prepare a form of Judgment satisfactory to defendants and submit the same for this Court's review, approval and entry within ten days of this Order.

Dated: ~~December XX, 2006~~
January 22, 2007


SAUNDRA B. ARMSTRONG
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

Case 4:03-cv-03926 Document 155 Filed 11/30/2006 Page 1 of 2

UNITED STATES DISTRICT COURT
Northern District of California
1301 Clay Street
Oakland, California 94612

www.cand.uscourts.gov

Richard W. Wicking
Clerk

General Court Number
510.637.3530


November 30, 2006

C-03-3926-SBA Tri-Valley Cares et al. v. Department of Energy et al.

On September 10, 2004 in the above entitled case the Court entered an Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment or in the alternative Partial Summary Judgment.

On October 30, 2006 the Court entered an Order Remanding this case to the Department of Energy for further proceedings consistent with the Court of Appeal decision.

Pursuant to 28 U.S.C. § 1924 there is no judgment or order for Plaintiffs under which costs may be claimed.



Frances Stone, Deputy Clerk

AO 133 (Rev. 9/89) Bill of Costs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRI-VALLEY CARES

BILL OF COSTS

V.

UNITED STATES DEPARTMENT OF ENERGY

Case Number: C-0-3-3926 SBA

Judgment having been entered in the above entitled action on October 30, 2006 against defendants,
Date
 the Clerk is requested to tax the following as costs:

| | |
|---|--------------------|
| Fees of the Clerk | \$ 210.00 |
| Fees for service of summons and subpoena | 34.60 |
| Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case | |
| Fees and disbursements for printing | 1,896.41 |
| Fees for witnesses (itemize on reverse side) | |
| Fees for exemplification and copies of papers necessarily obtained for use in the case | |
| Docket fees under 28 U.S.C. 1923 | |
| Costs as shown on Mandate of Court of Appeals | |
| Compensation of court-appointed experts | |
| Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 | |
| Other costs (please itemize) | |
| TOTAL | \$ 2,141.01 |

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: UNITED STATES DEPARTMENT OF ENERGY

Signature of Attorney: *Stephan C. Volker*Name of Attorney: STEPHAN C. VOLKERFor: TRI-VALLEY CARES

Name of Claiming Party

Date: 11-12-06Costs are taxed in the amount of \$ 0 and included in the judgment.

RICHARD W. WIEKING
 Clerk of Court

By: *Frances Stone*

Deputy Clerk

11/30/06
 Date

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRI-VALLEY CARES et al.,

No. C 03-3926 SBA

Plaintiffs,

ORDER

v.

DEPARTMENT OF ENERGY et al.

Defendants.

On October 16, 2006, the Ninth Circuit Court of Appeals issued a memorandum disposition, affirming in part and reversing in part this Court's grant of summary judgment in this case. Accordingly,

IT IS HEREBY ORDERED that the case is REMANDED to the Department of Energy for further proceedings consistent with the Ninth Circuit's decision. Specifically, the DOE shall consider whether the threat of terrorist activity necessitates the preparation of an Environmental Impact Statement. *See San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016 (9th Cir. 2006).

IT IS SO ORDERED.

Dated: 10/30/06


SAUNDRA BROWN ARMSTRONG
United States District Judge

EXHIBIT 3

12,302.02
R12-12-06

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRI-VALLEY CARES; et al.,

Plaintiffs - Appellants,

v.

DEPARTMENT OF ENERGY; et al.,

Defendants - Appellees.

No. 04-17232

D.C. No. CV-03-03926-SBA

JUDGMENT

Appeal from the United States District Court for the USDC-CAO - U.S.
DISTRICT COURT CALIFORNIA NORTHERN.

This cause came on to be heard on the Transcript of the Record from the
United States District Court for the USDC-CAO - U.S. DISTRICT COURT
CALIFORNIA NORTHERN and was duly submitted.

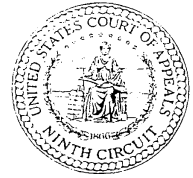
On consideration whereof, it is now here ordered and adjudged by this
Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED IN PART, REVERSED IN PART, REMANDED.

Filed and entered 10/16/06



Cathy A. Catterson
Clerk of Court

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



(415) 556-9800

December 8, 2006

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USDC, Oakland
USDC-CAO - U.S. DISTRICT COURT CALIFORNIA NORTHERN
Suite 400S
1301 Clay St.
Oakland, CA 94612

| No. | Title | Agency/D.C. No. |
|----------|--|-----------------|
| 04-17232 | Tri-Valley Cares v. Department of Energy | CV-03-03926-SBA |

Dear Clerk:

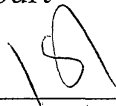
The following document in the above listed cause is being sent to you under cover of this letter.

- *Certified copy of the Decree of the Court*

The record on appeal will follow under separate cover. Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

Cathy A. Catterson
Clerk of Court



1 **PROOF OF SERVICE**

2 I am a citizen of the United States of America; I am over the age of 18 years and not a
3 party to within entitled action; my business address is 436 14th Street, Suite 1300, Oakland,
California 94612.

4 On December 12, 2006, I served a true copy of the foregoing documents entitled

5 **NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR ENTRY**
6 **OF JUDGMENT UNDER F.R. Civ. P. 58(d); [PROPOSED] ORDER**

7 in the above-captioned matter on each of the persons listed below by electronic facsimile
8 transmission and by placing a true copy thereof in a sealed envelope with postage thereon fully
prepaid in the United States mail at Oakland, California addressed as follows:

9 Thomas L. Sansonetti, Assistant Attorney General
10 Barclay T. Samford, Trial Attorney
11 U.S. Department of Justice
12 Environment and Natural Resources Div.
13 Suite 945, North Tower
14 999 18th Street
15 Denver, CO 80202
16 Tel: (303) 312-7362
17 Fax: (303) 312-7379

14 Alletta Belin, Esq.
15 Belin & Sugarman
16 618 Paseo de Peralta
17 Santa Fe, NM 87501
Tel: (505) 983-8936
Fax: (505) 983-0036

18 I certify under penalty of perjury that the foregoing is true and correct. Executed on
19 December 12, 2006 at Oakland, California.

20 
21 _____
22 Teddy Ann Fuss
23
24
25
26
27
28